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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

Written statement* submitted by International PEN, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

International PEN, the world association of writers representing members in 94 countries, has central to its mandate the promotion of the right to freedom of expression, which it sees as essential to the advancement of understanding between nations and cultures, and thus towards international peace and stability. Its Writers in Prison Committee has for over 21 years monitored attacks against writers and journalists for the practice of this right, and has on its records over 700 recorded instances of killings, arrests, imprisonment, physical attack, and court proceedings in the past 12 months. International PEN thus welcomes the recognition the United Nations Commission on Human Rights has given to the importance of this right, and in particular to the work and commitment of the UN's Special Rapporteur on Freedom Expression, Mr Abid Hussain.

When PEN's Writers in Prison Committee came into being in 1961, the bulk of attacks against writers who spoke out against the authorities took the form of long-term prison sentences. In the past decade, PEN has noticed a shift in the pattern of abuse. While the numbers of cases it has on its records has increased, those who are serving long sentences has declined in all but a few countries. This development is welcomed, but is offset by the growing use of court orders and non-custodial sentences such as fines or suspended prison terms. In many countries, outspoken writers and journalists find themselves entangled in lengthy court proceedings, sometimes taking many months or even years, and which take a heavy personal and financial toll. This can have as depressing an effect on the state of free expression as apparently more harsh forms of repression.

Criminal defamation laws are one of the most widely applied legislative means of bringing critics of authority to account. Leading government officials, even heads of state, in many countries resort to the courts to prosecute those who criticise them. The

Special Rapporteur on Freedom of Expression raised this issue in his recent reports to the Commission (E/CN.4/2000/63 and E/CN.4/2001/64) in which he referred to the "chilling effect" that defamation laws have on free expression. PEN commends Mr Hussain on his recommendations that all criminal defamation and libel laws be repealed in favour of civil laws, and that government officials and bodies be discouraged from bringing defamation cases as a means to silence their critics. However, PEN is sad to report that this practice has continued in the past year and highlights some notable examples.

In **Zimbabwe**, 2001 saw a continuation of the generalised harassment of the independent media. This has included serial defamation charges brought against leading independent journalists, as well as the destruction of the Daily News printing presses; and physical assaults on and death threats issued against journalists. The repression of the independent media has now been given a spurious legal sheen with the unconstitutional railroading through parliament in January 2002 of several draconian bills, two of which seek directly to muzzle voices critical of the government. The Public Order and Security Bill makes it a criminal offence to publish or communicate false statements prejudicial to the state, or to make public statements "undermining the authority of or insulting" the President. Since the bill provides that those in power may decide when they have been insulted or when the state has been maligned, practically any article written by a journalist could conceivably be deemed to be contrary to the provisions of the bill and earn the author a fine or up to five years' imprisonment. The bill also grants the authorities wide-ranging powers to "protect public order and security and to deal with acts of insurgency, banditry, sabotage, terrorism, treason and subversion". Those found guilty of transgressing this law, or who are even suspected of having done so, face possible life imprisonment or even the death sentence.

Turkey has the highest numbers of court cases initiated against writers and journalists on PEN's records. PEN was alarmed to note the Turkish International Association of Human

Rights (IHD) reported that in the first half of 2001, over 1,500 individuals were before the courts for their writings or publications. Many of these cases are of writers and journalists accused under Article 159 of the Criminal Code that penalises writings seen to "insult " the military, the state, parliament and even the judiciary itself. In all cases the authors of the "offending" articles had simply practised their right to criticise and comment on what they see as the shortcomings of these various institutions. Whatever the legitimacy of the authors' comments, it is quite apparent that in Turkey, criminal libel laws are being used to stifle criticism of state policy. In the vast majority of cases, the defendants are acquitted after lengthy trials, or sentenced to suspended prison terms or fines. Imprisonment is rarely applied. However, the drawn-out judicial process, usually taking several months and in some cases years, serves as an effective means of discouraging others, while at the same time less likely to draw international condemnation.

Independent journalists in **Belarus** face a daily battle to provide an alternative voice to that of the State's, and their plight has been high on International PEN's agenda for a number of years. Here too criminal libel laws are used to quell dissent. One of the most recent cases concerns the closure of the independent newspaper *Pahonia* in November 2001, and the charges brought against two of its staff who face trial on charges of "insulting the honour and dignity" of the President of Belarus in articles published in the paper. If found guilty, the journalists could be imprisoned for up to five years.

Insult to the state and its institutions is also one of the charges that has led **Iranian** writers and intellectuals before the courts. Over 20 writers and intellectuals are currently in prison or on trial for their writings or for their association with "dissident" organisations. These are charges that PEN considers to be in direct contravention of their right to freedom of expression and association. Five of the writers currently detained or on trial are specifically charged with "insult" either to the Islamic State of Iran or towards government officials. The 1985 Press Law enables the Ministry of Information to detain writers and close down publications that are deemed to have insulted the Leader of the Islamic Republic or state bodies.

Other countries where PEN has raised its concerns about the use of criminal defamation laws in the past year include: **Algeria, Armenia, Azerbaijan, Chad, Chile, Democratic Republic of Congo, Ecuador, Ethiopia, Guatemala, Kazakhstan, Mexico, Morocco, Nigeria, Slovakia, Sri Lanka, Sudan, Tonga, Tunisia, Ukraine, Uzbekistan, Yemen, Yugoslavia, and Zambia.** The number and range of countries that have prosecuted writers and journalists under criminal defamation legislation is a mark of how widespread the practice is.

International PEN welcomes this opportunity to once again raise with the United Nations Commission its concern about the widespread use of criminal defamation prosecutions as a means to stifle dissent, a direct contravention of Article 19 of the Universal Declaration on Human Rights. It supports the UN Special Rapporteur on Freedom of Expression's recommendations that criminal defamation laws be repealed as a means the significant world-wide improvement of the right to freedom of expression, as guaranteed under Article 19 of the Universal Declaration of Human Rights.